

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

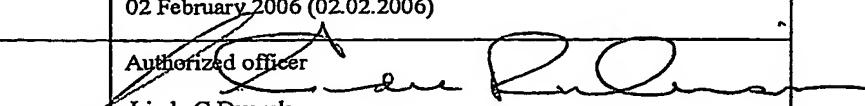


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|---|---|---|
| Applicant's or agent's file reference 1121.03002 | FOR FURTHER ACTION | See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416) |
| International application No. PCT/US04/41238 | International filing date (day/month/year) 10 December 2004 (10.12.2004) | Priority date (day/month/year) 11 December 2003 (11.12.2003) |
| International Patent Classification (IPC) or national classification and IPC IPC(7): A61N 5/06 and US Cl.: 607/088 | | |
| Applicant STAR ENERGETICS HOLDING COMPANY, LLC | | |

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 3 sheets, including this cover sheet.

This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of ___ sheets.
3. This report contains indications relating to the following items:
 - I Basis of the report
 - II Priority
 - III Non-establishment of report with regard to novelty, inventive step and industrial applicability
 - IV Lack of unity of invention
 - V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability, citations and explanations supporting such statement
 - VI Certain documents cited
 - VII Certain defects in the international application
 - VIII Certain observations on the international application

| | |
|--|--|
| Date of submission of the demand 06 July 2005 (06.07.2005) | Date of completion of this report 02 February 2006 (02.02.2006) |
| Name and mailing address of the IPEA/US Mail Stop PCT, Attn: IPEA/ US Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 Facsimile No. (571) 273-3201 | Authorized officer  Linda C Dvorak Telephone No. None |

I. Basis of the report1. With regard to the elements of the international application:^{*}

the international application as originally filed.



the description:

pages 1-25 as originally filedpages NONE, filed with the demandpages NONE, filed with the letter of _____.

the claims:

pages 26-34, as originally filedpages NONE, as amended (together with any statement) under Article 19pages NONE, filed with the demandpages NONE, filed with the letter of _____.

the drawings:

pages 1-25, as originally filedpages NONE, filed with the demandpages NONE, filed with the letter of _____.

the sequence listing part of the description:

pages NONE, as originally filedpages NONE, filed with the demandpages NONE, filed with the letter of _____.

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language _____ which is:



the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).



the language of publication of the international application (under Rule 48.3(b)).



the language of the translation furnished for the purposes of international preliminary examination (under Rules 55.2 and/or 55.3).

3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:



contained in the international application in printed form.



filed together with the international application in computer readable form.



furnished subsequently to this Authority in written form.



furnished subsequently to this Authority in computer readable form.



The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.



The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:the description, pages NONEthe claims, Nos. NONEthe drawings, sheets/fig NONE5. This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).^{**}

* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17).

** Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.
PCT/US04/41238**V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement****1. STATEMENT**

| | | |
|-------------------------------|---|-----|
| Novelty (N) | Claims <u>3-6, 9-11, 18-21, 23-25 and 33-43</u> | YES |
| | Claims <u>1, 2, 7-8, 12-17, 22, 26-32</u> | NO |
| Inventive Step (IS) | Claims <u>9-11, 23-25, 33-43</u> | YES |
| | Claims <u>1-8, 12-22, 26-32</u> | NO |
| Industrial Applicability (IA) | Claims <u>1-43</u> | YES |
| | Claims <u>NONE</u> | NO |

2. CITATIONS AND EXPLANATIONS

Claims 1, 2, 7-8, 12-17, 22 and 26-32 lack novelty under PCT Article 33(2) as being anticipated by U.S. Patent 6,290,713 B1 to Russell. Russell teaches an apparatus for phototherapy (abstract) using light emitting diodes (Col. 9, line 12) and having a controller capable of making the light-generating sources separately addressable so that they may be selectively illuminated in a particular pattern to achieve a particular therapeutic result. In addition, the power level of one or all of the light-generating sources may be controlled to optimize the light intensity required, to mix colors where different LEDs are used, or to shut off light-generating sources in the case of overheating (Col. 9, lines 40-45). The controller is interpreted as capable of modulating the pulse width as it is disclosed as capable of selectively turn on or off the individual sources. The method of use is inherent in the device structure.

Claims 3-6 and 18-21 lack an inventive step under PCT Article 33(3) as being obvious over U.S. Patent 6,290,713 B1 to Russell. Russell is discussed above, but does not disclose details for the translucent element or the housing shape. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. The applicant disclosed that polycarbonate has been "discovered" to generate a subtle energy field, yet also disclosed that such filed is not measurable bringing to question any criticality of the material of the translucent element. Thus, It would have been obvious to one having ordinary skill in the art at the time the invention was made to use any translucent material to diffuse the light.

Claims 9-11, 23-25 and 33-43 meet the criteria set out in PCT Article 33(2)-(3), because the prior art does not teach or fairly suggest an apparatus for emitting radiation including a shroud for excluding external light and calibration circuitry in the controller.

Claims 1-43 meet the criteria set out in PCT Article 33(4), and thus have industrial applicability because the subject matter claimed can be made or used in industry.

----- NEW CITATIONS -----